



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

November 14, 1996

Ms. Jennifer D. Soldano  
Associate General Counsel  
Texas Department of Transportation  
Dewitt C. Greer State Highway Bldg.  
125 E. 11th Street  
Austin, Texas 78701-2483

OR96-2115

Dear Ms. Soldano:

You ask that this office reconsider its decision in Open Records Letter No. 1626 (1996), in which this office determined that your predecessor had failed to demonstrate that litigation relating to certain requested records was pending or reasonably anticipated for purposes of section 552.103 of the Government Code. Your request was assigned ID# 102389. We hereby withdraw Open Records Letter No. 1626 (1996) and replace it with this ruling.

To secure the protection of section 552.103(a), a governmental body must demonstrate that the requested information relates to pending or reasonably anticipated litigation to which the governmental body is a party. Open Records Decision No. 588 (1991) at 1. When there has been a change in status with regard to pending or reasonably anticipated litigation, the governmental body is required to inform this office of the change in a timely manner. Open Records Decision No. 638 (1996). As a result of your request for reconsideration, this office has discovered a faxed transmission from your office dated October 10, 1995, informing us of the filing of a lawsuit against the Texas Department of Transportation in connection with the matter giving rise to the current open records request. We therefore conclude that the department has timely advised this office of the filing of the lawsuit and that it has made the requisite showing that the requested information relates to pending litigation for purposes of section 552.103(a). The requested records may therefore be withheld.

In reaching this conclusion, however, we assume that the opposing party to the litigation has not previously had access to the records at issue; absent special circumstances, once information has been obtained by all parties to the litigation, *e.g.*, through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349, 320 (1982). If the opposing parties in the litigation have seen or had access to any of the information in these records, there would be no justification for now withholding that information from the requestor pursuant to section 552.103(a). We also note that the applicability of section 552.103(a) ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink, reading "Loretta R. DeHay". The signature is fluid and cursive, with the first name "Loretta" being more prominent than the last name "DeHay".

Loretta R. DeHay  
Assistant Attorney General  
Open Records Division

LRD/RWP/rho

Ref.: ID# 102389

cc: Mr. Sterling Newcomb  
P.O. Box 765  
Greenville, Texas 754103-0765